

**Congress of the United States**  
**Washington, DC 20515**

March 4, 2019

The Honorable Alex Azar  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Azar:

As members of the GOP Doctors Caucus, we write to commend your, and President Trump's, efforts to reduce prescription drug prices for our nation's seniors by updating the anti-kickback statute's "safe harbor" regulations to ensure patients receive the maximum benefit from the pharmaceutical distribution system.

While Congress designed the federal anti-kickback statute to provide broad protections to patients and federal health programs from the corrupting influence of money, the Secretary of the Department of Health and Human Services (HHS) has consistently provided regulations to keep up with health system developments. The most recent proposed rule recognizes that the Medicare Part D program has become dependent on pharmaceutical manufacturer rebates that too often fail to reach the patients, particularly the sickest with the highest costs, which the program – a drug insurance system – was designed to help.

Price concessions provided by manufacturers to pharmacy benefit managers (PBM) are now almost exclusively conveyed through retrospective rebates, which have not translated into lower beneficiary out-of-pocket spending, but have resulted in ever higher list prices. The proposed rule would dramatically reduce the financial burden on patients at the pharmacy counter by encouraging the "pass-through" of those back-end rebates. HHS estimates that prescription drug rebates average from 26 to 30 percent, but some drugs have rebates far higher than that.<sup>1</sup> If there is a rebate to be had, we believe the patient should see the benefit.

The proposed rule would also promote better patient access to clinically-beneficial drugs by eliminating the "rebate wall." Presently, some products with high list prices may have preferred formulary placement because they offer high rebates, while lower cost, therapeutically equivalent – or even superior products – risk being denied access unless they too inflate their price for the sake of richer rebates. This reform will eliminate that perverse incentive and realign modern industry practices for beneficiary and program good.

Replacing rebates with transparent point-of-sale discounts should help lower patients' out-of-pocket spending and slow their progression through the benefit structure. According to Milliman

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<sup>1</sup> <https://www.hhs.gov/about/news/2019/01/31/trump-administration-proposes-to-lower-drug-costs-by-targeting-backdoor-rebates-and-encouraging-direct-discounts-to-patients.html>

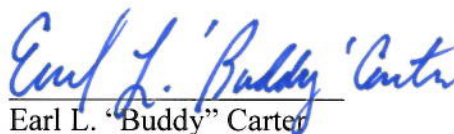
Replacing rebates with transparent point-of-sale discounts should help lower patients' out-of-pocket spending and slow their progression through the benefit structure. According to Milliman estimates, cited by the Centers for Medicare and Medicaid Services Office of the Actuary, this proposal will reduce Medicare spending on reinsurance by over \$100 billion over 10 years, which the Medicare Payment Advisory Commission observed is the fastest growing portion of the Part D benefit.<sup>2</sup>

We applaud your efforts to reduce drug costs and urge the Administration to work expeditiously toward finalizing this proposal so that patients and the Medicare program can benefit from these reforms in the 2020 plan year.

Sincerely,



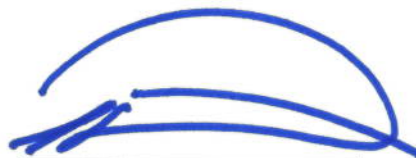
David P. Roe, M.D.  
Member of Congress



Earl L. "Buddy" Carter  
Member of Congress



Andy Harris, M.D.  
Member of Congress



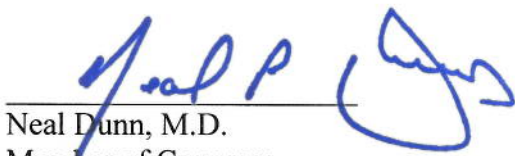
Scott DesJarlais, M.D.  
Member of Congress



Roger Marshall, M.D.  
Member of Congress



Brian Babin, D.D.S.  
Member of Congress

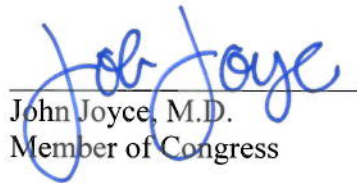


Neal Dunn, M.D.  
Member of Congress

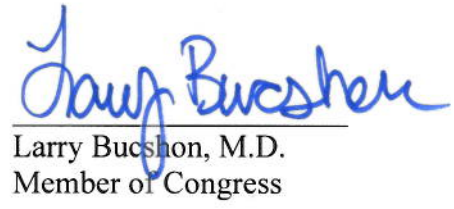


Ralph Abraham, M.D.  
Member of Congress

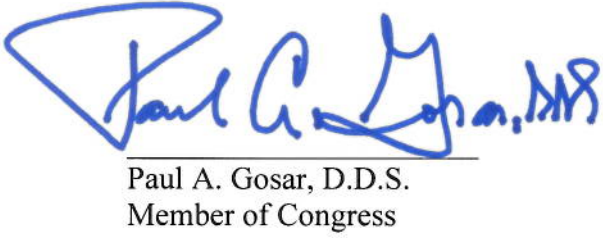
<sup>2</sup> <https://www.federalregister.gov/documents/2019/02/06/2019-01026/fraud-and-abuse-removal-of-safe-harbor-protection-for-rebates-involving-prescription-pharmaceuticals>



John Joyce, M.D.  
Member of Congress



Larry Bucshon, M.D.  
Member of Congress



Paul A. Gosar, D.D.S.  
Member of Congress